estimated gross rent which a hypothetical tenant by the higgling of market is prepared to pay for the Muar Cottage. On the evidence before me, my answer is certainly not $4,200. I therefore hold that failure on the part of the respondent to assess Muar Cottage at $4,200 is not contrary to the provisions of the Town Board Enactment.

The next question I have to consider is whether the respondent is acting contrary to the Town Board Enactment in assessing Muar Cottage at $17,400. Here the appellant's contention is simply based on the actual rent received. I cannot accept that this is correct in law in view of the evidence of demand for the premises at higher rental and its comparison with Jelai and Berinchang. However, counsel for the appellant relied strongly on *Tiong Hin Realty Sdn. Bhd.* v. *Chairman, Majlis Bandar, Kuantan,*[3] as an authority for the proposition that actual rent received should be the annual value of Muar Cottage. In my judgment the *ratio decidendi* in that case is of limited application and purely confined to the facts in that case. The case does not lay down any new principle, but merely the application of facts in that case to the principle already established. What had happened was that Mr. Justice Syed Othman rejected the contention that the property in question was in similar economic situation as the properties with which the former was compared, though the learned judge held they were physically similar. This is clear from the following passage of the judgment at page 213:—

"While the properties may be similar, they are, in my view, not in similar economic sites envisaged by Scott L.J.'s second principle. All the areas taken into account particularly the area in which the properties referred to in Jalan Besar are situated, are recently built-up; the roads are wide, and they all look new. They are clearly in different economic sites. The property in question is in the old part of the town where generally the buildings look shabby and out of this era. The valuation officer also does not appear to have regard to the fact that the property in question is along the row of shop houses, the valuation of most of which is what had been the value of the property before it was burnt down i.e. $900."

Thus, having rejected the property in question as being in similar economic situation, the learned judge accepted the actual rent received as the annual value because he said "the appellant has adduced incontrovertible evidence as to rent which he really gets from the property", and "the Town Council itself has accepted that $280 is the real rent". Thus, it is clear that the facts in that case are not the same as in our present case. In the instant case, I accept that the comparison of Jelai and Berinchang with Muar Cottage as being in similar economic situation, and I also accept the evidence of Lodin bin Wok Kamaruddin, the General Manager of the Perbadanan, that there are demands for Muar Cottage at $1,500 or $1,600 per month on a yearly basis and that the Perbadanan is prepared to assist the appellant to have the property leased on that rental. In view of these facts, I cannot see how the case of *Tiong Hin Realty Sdn. Bhd.* can assist the appellant. That being the case, I can find nothing which could justify me in interfering with the respondent assessing Muar Cottage at $17,400 instead of $4,200.

Hence I dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Skrine & Co.; Aziz & Mazlan.*

CHANG KHEE CHIEN & ANOR. v. PUBLIC PROSECUTOR

[R.Cr.J. (Ajaib Singh J.) March 14, 1979]
[Seremban — Criminal Revision No. 4 of 1979]

Criminal Law and Procedure — Bail — Presence of surety — Whether a mandatory requirement under the Criminal Procedure Code.

The two accused in this case were charged under section 324 of the Penal Code and were released on bail in the sum of $500 with one surety. There were several postponements of their case and on each occasion the two accused had duly appeared in court.

When the case was mentioned again the court granted a final adjournment at the request of the prosecution. The two sureties who had signed the bail bond for the attendance of the two accused were not present in court and because of their absence the learned Magistrate would not release the two accused and ordered them to be remanded.

Held: it is not necessary for any person who stands as a surety for the attendance and appearance of an accused released on bail to be personally present himself in court on each and every occasion that the accused has to attend court under the terms of the bail bond to answer the charge which is preferred against him.

Case referred to:-

(1) *Public Prosecutor* v. *Tanggaah (No. 2)* [1972] 1 M.L.J. 223.

CRIMINAL REVISION.

Vincent Paul Raj for the applicants.

Suriyadi bin Halim Omar (Deputy Public Prosecutor) for the respondent.

Ajaib Singh J. (delivering oral judgment): It is not necessary for any person who stands as a surety for the attendance and appearance of an accused released on bail to be personally present himself in court on each and every occasion that the accused has to attend court under the terms of the bail bond to answer the charge which is preferred against him. In accordance with the provisions of the bail bond which is prescribed in the Criminal Procedure Code a surety gives an undertaking that the accused shall attend court to answer the charge on the date specified in the bail bond and that he shall continue so to attend until otherwise directed by the court. But nowhere is it stated in the bail bond or in any provision in the Criminal Procedure Code relating to the granting of bail that the surety must also be present himself when the accused is required to attend court.

The two accused in this case were charged in the Magistrate's Court under section 324 of the Penal Code and were released on bail in the sum of $500 with one surety each. There have been several postponements of their case and on each occasion the two accused have duly appeared in court. When the case was mentioned again this morning the court granted a final adjournment at the request of the prosecution. The two sureties who had signed the bail bond for the attendance of the two accused were not present in court and because of their absence the learned Magistrate would not release the two accused and ordered them to be remanded to custody.

The learned Magistrate was clearly wrong in making this order of remand. Both the accused had appeared in court whenever they were previously required to do so and there was no suggestion now by

the prosecution nor was there any evidence before the learned Magistrate to give so much as a hint that the accused would break the terms of their bail bonds. The two accused were lawfully on bail and their detention on remand therefore was altogether wrong and illegal. In ordering the detention of the accused in the circumstances of this case the learned Magistrate was treading over dangerous ground and making herself liable to prosecution under section 342 of the Penal Code in addition to an action for damages for wrongful confinement.

In the course of his submission before me Mr. Vincent Paul Raj for the accused cited the case of *Public Prosecutor* v. *Tanggaah (No. 2).*[1] He said he had also referred to this case when he was before the learned Magistrate earlier in the morning. In that case Sharma J. in dealing with a somewhat similar problem held that "there is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or to produce the accused in court on each day of the hearing". This was a decision of a superior court and the learned Magistrate ought to have felt bound by it.

In the exercise of my revisionary powers I set aside the order of remand and direct that the two accused be released forthwith.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.*

CHARLES GRENIER SDN. BHD. v. TIENG HEE & SONS SDN. BHD.

[A.C.J. (Ajaib Singh J.) March 28, 1979]
[Seremban — Civil Appeal No. 5 of 1978]

Landlord and Tenant — Claim for possession — Rent controlled premises — Premises no longer occupied by tenant — Notice to quit — Premises required by owner for his own use — Estoppel — Control of Rent Act, 1966, s. 16(1)(f) & (i) & s. 16(2).

In this case the learned Magistrate had ordered the appellants to give up possession of the premises on the grounds (a) the appellants were no longer in possession of the premises; (b) the respondents required the premises for their own use. The respondent had given a month's notice to quit and subsequently a notice on December 30, 1974 requiring the appellants to quit by the end of February 1976 on the ground that they required the premises for their own use. The appellants appealed.

Held: (1) the learned Magistrate was right in holding that the appellants were no more in personal occupation of the premises and that the first notice to quit was valid and therefore the respondents were entitled to recover possession under section 16(1)(i) of the Control of Rent Act;

(2) there was insufficient evidence to infer that a new tenancy had been created after the expiry of the first notice, but, even if it were held that a new tenancy had been created, the learned Magistrate was right in holding that the respondents had proved their claim for recovery under section 16(1)(f) of the Act, in that they required the premises for their own use;

(3) there was no evidence to suggest that the respondents had led the appellants into the belief or expectation that they could remain there for as long as they liked or for a considerable period of time and therefore the plea of estoppel could not succeed.

Case referred to:-

(1) *Loewenthal* v. *Vanhoute* [1947] 1 All E.R. 116.

CIVIL APPEAL.

R.C. Rajasingam for the appellants.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: This is an appeal from the decision of the learned Magistrate ordering the defendants to give vacant possession of premises No. 69 Birch Road to the plaintiffs.

In their statement of claim the plaintiffs averred that they were the owners of the premises concerned and that the defendants were the monthly tenants thereof paying rent at the rate of $68.75 per month. On July 21, 1972 the plaintiffs served a notice on the defendants terminating their tenancy on August 31, 1972. It was alleged that the defendants had gone out of occupation of the premises as from June 30, 1972 but that the defendants had failed to deliver vacant possession of the premises to the plaintiffs. Thereafter the plaintiffs had accepted the monthly rent tendered by the defendants from time to time on a without prejudice basis.

On December 30, 1974 the plaintiffs served another notice to the defendants requiring them to quit the premises by the end of February 1976 on the ground that they required the premises for their own use. The defendants however failed to comply with the second notice after the expiration of the period of twelve months. The plaintiffs alleged further that they were also the registered owners of premises No. 70 Birch Road which were contiguous to the premises in question and that on these premises No. 70 Birch Road they were doing their business of dealers in electrical goods such as radios, television sets, refrigerators, washing machines, water heaters, bicycles, gas cookers, toys, type-writers etc. They alleged that shop No. 70 was crammed with goods and therefore they very badly required premises No. 69 for their own use. The plaintiffs also alleged that the defendants as a limited company were not protected in law as such or alternatively their monthly tenancy had been terminated by a valid notice to quit dated July 21, 1972 or in the further alternative the plaintiffs required the premises for their own use under section 16(1)(j) of the Control of Rent Act, 1966. (Section 16(1)(j) in fact refers to excess rents received from subtenants and on appeal before me Mr. Atma Singh Gill submitted that this was a typing error and it should read as section 16(1)(f). He had brought this error to the notice of the trial Magistrate but no amendment appears to have been formally made in the record).

In their statement of defence the defendants admitted that they were tenants of the plaintiffs and that they had received the notice to quit dated July 21, 1972 but denied that the notice terminated their tenancy. They also denied that they had gone out of occupation of the premises as from June 30, 1972 or at any other time. They averred that they were still in occupation of the premises. They also averred that the premises were controlled premises within the meaning of the Control of Rent Act, 1966. The defendants denied receiving the second notice to quit